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No. 424

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CHARLES ELMORE CR

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1932

WALKER WOOD, Secretary of State, Et. Al,
Appellants,

VS.

STEWART C. BROOM, Appellee.

APPELLANTS' STATEMENT AS TO JURISDICTION ON APPEAL.

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MAY IT PLEASE THE COURT:

The appellants in support of the jurisdiction of this Court to review the above styled cause on appeal, respectfully present:

A.
STATUTORY PROVISION SUSTAINING JURISDICTION.

The act of February 13, 1925, Chapter 229, Section 1, 43 Stat. 936,938, provides that Sections 238 and 266 of the Judicial Code are amended to read as follows:

> "Sec. 238. A direct review by the Supreme Court of an interlocutory or final judgment or decree of a district court may be had where it is so

provided in the following sections and not otherwise."

"Sec. 266. No interlocutory injunction suspending or restraining the enforcement, operation or execution of any statute of a State by restraining the action of any officer of such state in the enforcement or execution of such statute, or in the enforcement or execution of an order made by an administrative board or commission acting under and pursuant to the statutes of such state, shall be issued or granted by any justice of the Supreme Court, or by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, upon the ground of the unconstitutionality of such statute, unless the application for the same shall be presented to a justice of the Supreme Court of the United States, or to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a justice of the Supreme Court or a circuit judge and the other two may be either circuit or district judges, and unless a majority of said three judges shall concur in granting such application. Whenever such application as aforesaid is presented to a justice of the Supreme Court, or to a judge, he shall immediately call to his assistance to hear and determine the application two other judges: Provided, however, that one of such three judges shall be a justice of the Supreme Court, or a circuit judge. Said application shall not be heard or determined before at least five day's notice of the hearing has been given to the governor and to the attorney general of the State, and to such other persons as may be defendants in the suit: Provided, that if of opinion that irreparable loss or damage would result

to the complainant unless a temporary restraining order is granted any justice of the Supreme Court or any circuit or district judge, may grant such temporary restraining order at any time before such hearing and determination of the application for an interlocutory injunction, but such temporary restraining order shall remain in force only until the hearing and determination of the application for an interlocutory injunction upon notice as aforesaid. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction in such case. It is further provided that if before the final hearing of such application a suit shall have been brought in a court of the State having jurisdiction thereof under the laws of such state, to enforce such statute or order, accompanied by a stay in such State Court or proceedings under such statute or order pending the determination of such suit by such State court, all proceedings in any court of the United States to restrain the execution of such statute or order shall be stayed pending the final determination of such suit in the courts of the State. Such stay may be vacated upon proof made after hearing, and notice of ten days served upon the attorney general of the State, that the suit in the State courts is not being prosecuted with diligence and good faith. The requirement respecting the presence of three judges shall also apply to the final hearing in such suit in the district court; and a

direct appeal to the Supreme Court may be taken from a final decree granting or denying a permanent injunction in such suit."

B

DATE OF DECREE AND DATE OF APPLICATION FOR APPEAL

The decree sought to be reviewed was entered on the 16th day of August, 1932.

The application for appeal was presented on the 8th day of September, 1932.

C

NATURE OF CASE AND RULING BELOW

This is an appeal from a final decree of the United States District Court, Southern District of Mississippi, Jackson Division, three judges sitting in the cause wherein appellee filed a bill of complaint against the appellants to enjoin the enforcement of House Bill No. 197, Regular Session of the Legislature of 1932. Prior to the census of 1930 the State of Mississippi was entitled to eight members of Congress. Under the act of Congress reapportioning the representations in the various states the State of Mississippi was allowed only seven Congressmen. Said House Bill No. 197 was an act to redistrict the state so as to provide for seven districts instead of eight. The original bill was filed seeking to enjoin the enforcement of said House Bill No. 197 and requiring that the election for Congressmen in the State of Mississippi be held from the State at large.

The basis for the relief prayed for is the claim that the above act of the Legislature of the State of Mississippi is unconstitutional and void, because:

First: Said act, generally known as the Congressional Redistricting Act, violates the provisions of Article 1, Section 4 of the Constitution of the United States.

Second: Because said act violates Section 3 of the Act of Congress of August 8th, 1911, Title 2, United States Code Annotated, Section 2.

After hearing said cause a majority of said Court, composed of Honorable Rufus E. Foster, Circuit Judge, Honorable E. R. Holmes and Honorable Ben C. Dawkins, District Judges, held that said act was in violation of the Constitution and laws of the United States hereinbefore named, and perpetually enjoined and restrained appellant from holding an election for Congressman under said act.

D

CASES BELIEVED TO SUSTAIN JURISDICTION

The following decisions of this Court are believed to sustain jurisdiction of this appeal:

Moore v. Fidelity & Deposit Co., 272 U. S. 317 320-321;

Smith v. Wilson, 273 U. S. 388;

Ex Parte Buder, 271 U. S. 461, 465;

State Board of Tax Commissioners v. Jackson, 283 U. S. 537;

Rodgers v. Matthews, 76 L. Ed. 271.

We most respectfully submit that this Court has jurisdiction of this appeal by virtue of Sections 238 and 266 of the Judicial Code, as amended by the Act of February 13, 1925.

Respectfully submitted,

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Attorney General

J. A. LAUDERDALE,
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Attorneys for Appellants